D.B. CIVIL SPECIAL APPEAL NO.97/2001.
[MOHAN SINGH VS. SMT. SANTOSH & ORS.]

Date of Order : 23.07.2007

HON'BLE JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr.D.K.Parihar for the appellant.

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The issue raised in this appeal is about absolving the Insurance Company indemnifying the petitioner appellant in respect of penalty imposed under Section 4 [A] of the Workmen Compensation Act in respect of the compensation awarded in favour of the respondent No.1 Smt. Santosh whose husband had met with an accident in course of his employment as a result of which he died. The claim was lodged before the Workmen Commissioner under the Workmen Compensation Act.

The Commissioner allowed the claim petition and determined Rs.2,16,910/- as compensation payable to the claimants. He also found that the vehicle with which the accident took place was duly insured with the respondent Insurance Company but Insurance Company is not liable for indemnify the insured in respect to penalty which is imposed as a result of default on part of the employer, thought the Insurance Company is liable to indemnify insured of principal amount of compensation

and the interest thereon. He imposed the penalty of Rs.54,228/-.

The appeal was only in respect of award of penalty against the appellant employer, for absolving the Insurance Company of its liability to indemnify the appellant.

Whether the Insurance Company is liable to indemnify the employer in respect of the penalty imposed under the Workmen Compensation Act, the principle is well settled through the decision of the Hon'ble Supreme Court and two bench decisions of this Court that unless the Insurance Company specifically agrees to indemnify the insured in respect of the penalty imposable under the Workmen Compensation Act, also, ordinarily the Insurance Company is not liable to indemnify the insured in respect of penalty under the provisions of the Workmen Compensation Act.

Reference in this connection be made to the two decisions of this Court in D.B.Civil Misc. Appeal No.768/2005 United India Insurance Co. Ltd. Vs. Smt. Sira Kanwar & Ors. decided on 27.04.2007 and Oriental Insurance Co. Ltd. Vs. Vilas Devi & Ors., 2001 ACJ 950. In both cases reliance was placed on the decision of the Hon'ble Supreme Court in Ved Prakash Garg Vs. Premi Devi & Ors. 1998 ACJ 1.

In view thereof there is no merit in this appeal. The appeal, therefore, is dismissed.

No costs

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA), J.

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